IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 204 of 2005

OM PRAKASH & ORS
V/S
STATE & ORS

Mr. MC BHOOT, for the appellant / petitioner

Date of Order : 3.7.2006

HON'BLE SHRI N P GUPTA,J.

JUDGMENT

Heard learned counsel for the appellant.

By the impugned judgments and decrees, the learned Courts below have dismissed the plaintiff's suit, filed for declaration and perpetual injunction. The decree prayed for was, that it be declared that the guarantee deed alleged to have been submitted by the petitioner regarding the poppy husk contract, of Churu Group is forged one, and not binding on the plaintiff. The other relief claimed is, that consequentially, the defendant No.2 be restrained from taking any proceedings for auction against the plaintiff, on the basis of the aforesaid forged guarantee deed.

It was contended by the learned counsel for the appellant, that there is no evidence on record to show that

the plaintiff ever gave the aforesaid guarantee, and the learned Courts below were in error in finding the guarantee deed to have been executed by the deceased-plaintiff. It was then contended, that the learned Courts below were in error in excluding the evidence of the hand writing expert produced on the side of the appellant. It was then contended, that the learned Courts below were in error in holding, that since the plaintiff had effective alternative remedy, under Section 9A of the Rajasthan Excise Act, by virtue of provisions of Section 41 of the Specific Relief Act, the plaintiff is not entitled to relief in the present suit. According to learned counsel, the remedy provided under Section 9A is not effective remedy, as, for availing the remedy thereunder the person concerned is to deposit 75% of the amount, and that there is no legal bar against the maintainability of the suit, where the plaintiff has never given any guarantee, and he was being proceeded against.

Learned counsel wanted me to go through the document, as according to learned counsel, even from the naked eye view of the document, in conjunction with the other admitted signatures of the plaintiff, it would be clear, that it doesn't bear the signatures of the deceased plaintiff.

I have considered the submissions and do not find

any force in them.

The allegations of the plaint are, that the plaintiff never gave any guarantee, and on being demanded, he was not supplied the copy of the guarantee deed, and that, the alleged guarantee deed is a forged one. While according to the written-statement, the plaintiff never asked for copy of the guarantee deed, and he is being proceeded against, as he is a guarantor. It was pleaded, that the plaintiff produced the guarantee on 30.4.99 before the District Excise Officer, Churu, alongwith the other documents, like solvency certificate etc. It was maintained, that the documents were produced by the plaintiff, which were got examined by the department, and were accepted, and on submission of the document, contract is complete. Another objection taken was about non-maintainability of the suit, in view of the provisions of Section 9A of the Excise Act, read with Section 41 of the Specific Relief Act.

Both the learned Courts below after appreciating the evidence of the parties, have inter-alia found, that the documents have not been forged by the defendants, and thus, the plaintiff has failed to prove the documents to be forged or void.

I have gone through the entire evidence on record,

even de-novo, and have also seen the documents including the guarantee deed, the solvency certificates and other documents, and even after re-appreciating the evidence, I am of the view, that the plaintiff has not been able to establish, that the documents were not signed by Brij Lal, or that they are forged once. The evidence led on the side of the defendant sufficiently establishes, that the documents were executed by the deceased-plaintiff Brij Lal, and were produced by him before the P.W.7, the District Excise Officer. Those documents were got examined and a guarantee was accepted. Thus, on facts, the findings recorded by the learned Courts below are not vitiated on any of the grounds available under Section 100 CPC.

Additionally, Section 9A of the Excise Act is also a hurdle in the way of plaintiff-appellant. However, taken from any stand point, I do not find the appeal to be involving any substantial question of law, on the basis of which the judgments of the two learned Courts below may be found to be vitiated.

The appeal thus, has no force and is dismissed summarily.

(N P GUPTA),J.

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